

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 4:05CR595HEA(MLM)
)
EMILIO SAENZ,)
)
Defendant.)

**SECOND REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the court on Defendant Emilio Saenz' Motion to Exclude Statements of Co-Defendant at Trial [Doc. 88] and Motion for Relief from Prejudicial Joinder [Doc. 89]. The government has filed a Response [Doc. 91] in which the government concedes that co-defendant Melissa Saenz' statement creates a Bruton problem.¹ According to the government, this statement directly implicates defendant Emilio Saenz in the delivery of cocaine on September 27, 2005 and because it references conduct by both Emilio and Melissa Saenz, redaction is not a viable solution. The government believes that a separate trial for Melissa Saenz is appropriate in that defendant Emilio Saenz does not request a separate trial from the other co-defendants.

Accordingly,

IT IS HEREBY RECOMMENDED that Defendant Emilio Saenz' Motion to Exclude Statements of Co-Defendant at Trial be DENIED AS MOOT. [Doc. 88]

IT IS FURTHER RECOMMENDED that Defendant Emilio Saenz' Motion for Relief from Prejudicial Joinder be GRANTED. [Doc. 89]

¹ Bruton v. United States, 391 U.S. 123 (1968) (holding that in a trial where two or more defendants are tried jointly the admission of a non-testifying co-defendant's confession that expressly implicates the defendant, violates the defendant's Sixth Amendment confrontation rights, even if the district court gives the jury limiting instructions to consider the confession only against the co-defendant who confessed.)

IT IS FURTHER RECOMMENDED that a separate trial be ordered for defendant
Melissa Saenz.

The parties are advised that they have eleven (11) days in which to file written objections to this report and recommendation pursuant to 28 U.S.C. §636(b)(1), unless an extension of time for good cause is obtained, and that failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356 (8th Cir. 1990).

/s/Mary Ann L. Medler
MARY ANN L. MEDLER
UNITED STATES MAGISTRATE JUDGE

Dated this 2nd day of March, 2006.